

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DECKERS OUTDOOR CORPORATION,)	
)	
Plaintiff,)	Case No. 15-cv-1191
)	
v.)	Judge Manish S. Shah
)	
XIAO MEI, et al.,)	Magistrate Judge Young B. Kim
)	
Defendants.)	
)	
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Declaration of Justin R. Gaudio

DECLARATION OF JUSTIN R. GAUDIO

I, Justin R. Gaudio, of the City of Chicago, in the State of Illinois, declare as follows:

1. I am an attorney at law, duly admitted to practice before the Courts of the State of Illinois and the United States District Court for the Northern District of Illinois. I am one of the attorneys for Plaintiff Deckers Outdoor Corporation (“Deckers”). Except as otherwise expressly stated to the contrary, I have personal knowledge of the following facts and, if called as a witness, I could and would competently testify as follows:
2. According to a January 2011 MarkMonitor report entitled “Traffic Report: Online Piracy and Counterfeiting,” the combined traffic to 48 sites selling counterfeit goods was more than 240,000 visits per day on average or more than 87 million visits per year. A 2012 MarkMonitor article entitled “White Paper: Seven Best Practices for Fighting Counterfeit Sales Online” reported that counterfeiters’ illicit online activities will cost legitimate businesses \$135 billion in lost revenue annually. True and correct copies of these reports are attached hereto as **Exhibit 1**.
3. According to an intellectual property rights seizures statistics report issued by Homeland Security, the manufacturer’s suggested retail price (MSRP) of goods seized by the U.S. government in fiscal year 2013 was over \$1.74 billion, up from \$1.26 billion in 2012. A similar report issued by Homeland Security in 2012 further indicated that the Internet has fueled “explosive growth” in the number of small packages of counterfeit goods shipped through the mail and express carriers. True and correct copies of these reports are attached hereto as **Exhibit 2**.
4. A February 2011 report commissioned by Business Action to Stop Counterfeiting and Piracy (BASCAP) entitled “Estimating the Global Economic and Social Impacts of Counterfeiting

and Piracy” included findings that counterfeit and pirated products account for an estimated \$650 billion in losses in international trade, resulting in tens of thousands of lost jobs for legitimate businesses and broader economic losses, including lost tax revenue, of more than \$125 billion every year. This figure is expected to increase each year. A true and correct copy of this report is attached hereto as **Exhibit 3**.

5. In my experience in combating online counterfeiting over the last six years, I have observed counterfeiters using a variety of tactics to evade enforcement efforts. Specifically, counterfeiters like Defendants in the present case will often register new domain names or online marketplace accounts under new aliases once they receive notice of a lawsuit.
6. Once notice of a lawsuit is received, counterfeiters frequently move website hosting to rogue servers located outside the United States and/or begin redirecting traffic to a different, newly created domain name not named in the corresponding lawsuit. Rogue servers are notorious for ignoring take down demands sent by brand owners.
7. In my experience, once notice of a lawsuit is received, counterfeiters such as Defendants move funds from their PayPal accounts to off-shore bank accounts outside the jurisdiction of this Court. PayPal transaction logs that I have reviewed in previous similar cases indicate that counterfeiters transfer and/or attempt to transfer funds once they have received notice of a lawsuit.
8. For these reasons, in the absence of an *ex parte* Order, Defendants could and likely would modify registration data and content, change hosts, redirect traffic to other websites in their control, and move any assets from accounts in U.S.-based financial institutions, including PayPal accounts, to offshore accounts.

9. Analysis of PayPal transaction logs from previous similar cases indicates that off-shore counterfeiters regularly move funds from U.S.-based PayPal accounts to China-based bank accounts outside the jurisdiction of this Court.
10. I have accessed the Internet Corporation for the Assigned Names and Numbers (“ICANN”) website at www.icann.org in order to download the ICANN Registrar Accreditation Agreement. A true and correct copy of the ICANN Registrar Accreditation Agreement is attached hereto as **Exhibit 4**. According to Section 3.7.7.1 of the Registrar Accreditation Agreement established by ICANN, an individual or entity that registers a domain name is required to provide “accurate and reliable contact details and promptly correct and update them during the term of the ... registration, including ... postal address.”
11. An investigation of the WhoIs information for each of the respective Defendant Domain Names for which registration information is available reveals that Defendants have ignored the applicable ICANN regulations and provided false physical address information to the domain name registrars in order to avoid full liability. For example, many of Defendants’ names and addresses used to register the Defendant Domain Names are incomplete, contain randomly typed letters, fail to include cities or states, or use privacy services that conceal this information. Identical contact information among multiple domain names also suggests that many of the aliases used to register the Defendant Domain Names are used by the same individual or entity.
12. I have reviewed the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters (“Hague Convention”), to which China is a signatory. The Hague Convention does not preclude service by email, and the declarations to the Hague Convention filed by China do not appear to expressly prohibit email service.

Additionally, according to Article 1 of the Hague Convention, the “convention shall not apply where the address of the person to be served with the document is not known.” A true and correct copy of the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters, and a list of signatory members, are collectively attached hereto as **Exhibit 5**.

13. I have researched whether the issuance of an order to serve process upon the Defendants by electronic mail pursuant to Fed. R. Civ. P. 4(f)(3) is contrary to or likely to offend the law of the People’s Republic of China (the “PRC”). I located an English language version of the current Civil Procedure Law of the PRC, which was adopted on April 9, 1991. A true and correct copy of the Civil Procedure Law downloaded from Chinacourt.org, a website sponsored by the Supreme People’s Court of the PRC, is attached hereto as **Exhibit 6**. Chapter VII, Section 2, of the Civil Procedure Law governs service of process. I am informed and believe that the law does not preclude the service of process by email and allows for alternate service of process in certain circumstances. For example, Article 84 of the law provides that, if the whereabouts of a recipient of the service is unknown, or if a document cannot be served by the other methods reflected in the law, a document shall be served by public announcement, a method even less likely to reach a defendant than service by email.
14. **Exhibit 7** attached hereto is a true and correct copy of the unpublished decisions cited in Deckers’ Memorandum in Support of the Motion for TRO.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 9th day of February 2015 at Chicago, Illinois.

/Justin R. Gaudio/

Justin R. Gaudio
Counsel for Deckers Outdoor Corporation